IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-03-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.27978 OF 2004
AND
W.P.M.P.NO.33999 OF 2004

R. Rajendran
S/o.A. Rathinasamy Naidu .. Petitioner

Vs.

1. Secretary to Government,
   Environment and Forest
   (FR.2) Department,
   Fort St. George, Chennai 600 009.

2. The Principal Chief Conservator
   of Forest, Panagal Building,
   Saidapet, Chennai 600 015.

3. The Conservator of Forests,
   Dindigul Circle, Dindigul.

4. District Forest Officer,
   Kodaikannal. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in his Proceedings G.L.(2D) No.40 dated 11.9.2004 and quash the same and consequently direct the first respondent to reinstate the petitioner into service with all consequential service and monetary benefits.

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For Petitioner : Mr.S. Shanmugam
Senior Counsel for
Mr.G. Bala

For Respondents : Mr.A.L. Somayaji
Addl. Advocate General
for Mr.V.S. Sethuraman

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J U D G M E N T

The order of compulsory retirement invoking Rule 56 (2) of the Fundamental Rules is under challenge in the present writ petition.

2. The petitioner joined service in September, 1978 as Forester. In course of time, he was promoted as Forest Ranger and functioning as such since from the year 2000. The petitioner was transferred and posted as Ranger in Periyakulam Range. The specific averment of the petitioner is that on 13.8.2004 he had reported about the illicit felling of teakwood trees suspecting one amongst the forest officials and involvement of some influential persons in the political field. On the basis of his complaint, a criminal case has been registered and warrant had been issued to arrest 20 accused persons, including two "politically influential" persons. The case of the petitioner is that, in order to avoid the petitioner in such place, he was placed under suspension on 25.8.2004 on the ground that "grave charges" against the petitioner were contemplated. The petitioner filed W.P.No.24756 of 2004 challenging such order of suspension and an order of stay was passed on 31.8.2004 and the matter was directed to be listed on 1.9.2004. On 1.9.2004, in the counter affidavit filed in such writ petition, it was indicated that the District Forest Officer of Kodaikanal Division, under whom the petitioner was working as a Ranger, has reported about the illegal felling of teak and other trees. It was also reported that one Forest guard was beaten by the petitioner. A Committee had been constituted by the Assistant Conservator of Forests and such Committee reported about the illegal activities of the petitioner and therefore, it was recommended that the petitioner should be placed under suspension as an enquiry into "grave charges" against him was contemplated. However, subsequently on 10.9.2004, such suspension was revoked by the Conservator of Forests with immediate effect, because such suspension order was stayed by the High Court and charge-sheet was yet to be filed. On 11.9.2004, an order of compulsory retirement was passed by the Government and such order was affixed to the house of the petitioner on 12.9.2004 itself. It is also indicated by the petitioner that the order of revocation of suspension was also so pasted on the very same date. It is the contention of the petitioner that the order of compulsory retirement has been passed as a measure of punishment with a view to avoid any departmental enquiry. It was the specific stand of the Government in the writ petition relating to suspension that an enquiry into "grave charges" were contemplated. It is further indicated that even though the purported order of compulsory retirement is based on records pertaining to January 2003 to June 2003, the petitioner has not been subjected to any punishment, and the order of compulsory retirement has been passed without application of mind. It has been further indicated that apart from the fact that the petitioner had earlier been suspended in contemplation

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of a disciplinary proceeding, he was also facing two other disciplinary proceedings, one under Rule 17(b) dated 22.12.2003 and the other under Rule 17(a) dated 11.8.2004 and even without finding the petitioner guilty, an order of compulsory retirement is passed as a short-cut to avoid departmental enquiry. It is further submitted that such order has been passed only because the petitioner was instrumental in initiating criminal case and obtaining warrants from the Court of Magistrate against several persons, including "politically influential" persons.

3. A counter affidavit to by the Deputy Secretary to the Government has been filed. In such counter affidavit it has been described as if it is by the first respondent i.e., Secretary to the Government. In such counter affidavit reference has been made to letter dated 19.8.2004 issued by the District Forest Officer, Kodaikanal Division indicating about several complaints against the petitioner and the incident relating to the alleged beating of one Muniappan, a Forest Watcher. It has been indicated :

> "... The Conservator of Forests, Dindigul Circle after going through the report and examination of connected files, satisfied that there was a prima facie case to issue chargesheet to the petitioner and he himself convinced in the interest of justice and public interest that the writ petitioner should be placed under suspension. Accordingly, the Conservator of Forests, Dindigul has passed orders vide his Proc.No.E1/7725/2004 dated 25.8.2004 placing the petitioner under suspension pending enquiry into grave charges contemplated against him."

In paragraph 11 it has been indicated that the District Forest Officer has initiated proceedings on 11.8.2004 against the subordinate officers, including the petitioner. In paragraph 11(b), it has been indicated :

> "11.b) As regards non-bailable warrants stated in Sl.No.5 of Additional typed set, I respectfully submit that it is true that the petitioner has obtained warrants against 20 persons on 23.8.2004 from the Judicial Magistrate, Kodaikanal in the offence No.PKM/STOR 1/2004-2005. It is pertinent to submit that for the illegal felling of trees occurred as early as last week of July 2004, the petitioner obtained the said warrants on 23.8.2004 without any basis or investigation or whatsoever. The petitioner has not at all arrested anybody, but he has obtained warrants against 20 persons. In fact, the forest offenders can be arrested even without warrant. Even obtaining such warrants, will not exonerate the petitioner from his failure in protecting the valuable forest from illicit fellings and other irregularities."

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In paragraph 12, it has been indicated :-

> "12. I respectfully submit that the events from 8.8.04 till the date of service of the petitioner in Periyakulam range were related to irregularities committed by him in the said range. The order of compulsory retirement was passed only on the integrity of the writ petitioner and in public interest and in no way connected with the irregularities committed by the petitioner in Periyakulam range and hence the order of compulsory retirement was passed neither as a measure of punishment nor with malafide intention."

In paragraph 14, it has been emphasised that on the basis of suspicion that the petitioner is lacking in integrity, the order of compulsory retirement had been passed. In paragraph 19, it has been indicated :-

> "19. I respectfully submit that as far as the disciplinary proceedings initiated against the Writ Petitioner prior to passing of impugned order is concerned, they will be dropped in the light of guidelines issued by the Government for proper implementation of Rule 56 (2) and in fact the Government had already directed the Principal Chief Conservator of Forests vide Government Letter No.21673/FR.2/2004-1 dated 11.09.2004 to drop the charges against Thiru R. Rajendran initiated in Ref.No.3184/2003/E dated 12.12.2003 and 1321/2004/E dated 23.06.2004 by the Deputy Conservator of Forests, Industrial Wood Division, Kodaikanal. Therefore, the apprehension of the Writ Petitioner that as per the disciplinary proceedings, enquiry will be conducted is imaginary.

4. A reply to the counter affidavit has been filed by the petitioner. It has been stated in paragraph 2 as follows :-

> "2. As regard para 5 of the Counter, I state that after I joined at Periykulam Range, I found a huge illegal felling of trees and cultivation of Ganja in the Reserve Forest area and I had taken action against the persons who had illegally felling the teak trees. On my complaint a case was registered, as the accused persons were close associates of the ruling party political leaders, I was asked to withdraw the complaint and drop further action against them. As I refused to yield to their threat, I was put to harassment. Because of it I was placed under suspension. Departmental enquiry has been initiated against me. I had challenged the order of suspension before this Hon'ble Court. The Hon'ble Court had admitted the Writ Petition and also granted Stay."

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In paragraph 11, it has been indicated :-

> " I deny the averments contained in para 11 (a) (b)(c) it is totally incorrect to state that I had not prevented illicit felling of teak trees. As a matter of fact I sent a report immediately after joining duty at Periakulam regarding the felling of the trees. I state that the accused persons who are responsible for illegal felling of the teak trees are very influential persons and to prevent me from proceeding further in their case, the order of compulsory retirement was issued against me."

In paragraph 12, it has been indicated as follows :-

> " 12. As regards to averments contained in para 11(b) of the counter affidavit I state that the authorities have admitted that a non-bailable warrant has been issued against 20 persons on my application. I state that only after investigation and after sending the report to the higher authority, the warrants were issued against the accused persons. Since the accused were absconding I had to obtain warrants from the court."

5. From these averments made in the writ petition, counter affidavit and the reply affidavit, the following undisputed factual scenario emerges :

A departmental proceeding under Rule 17(b) contemplating imposition of major punishment has been initiated on the basis of the report of the Deputy Conservator of Forests, Industrial Wood Division, Kodaikanal dated 12.12.2003. In the said departmental proceeding, Charge No.1 was relating to the alleged misbehavior of the petitioner with the higher official, namely, the Deputy Conservator of Forests, Industrial Wood Division. Charge No.2 was the alleged misappropriation of the Government money. There are four other charges including the charge relating to giving false allegation against the officers. There cannot be any dispute that the charges, particularly, charges 1, 2 and 6 were very serious. In the counter it is indicated that the order of compulsory retirement is on the basis of the doubtful integrity of the petitioner. The entire records relating to various disciplinary proceedings did not indicate imposition of any severe punishment, save and except some minor punishments here and there. As a matter of fact, the records of other officers, who were also subjected to the Review Committee at the same time, indicate imposition of several more severe punishments on those officers and yet they have been allowed to continue. Therefore, it has to be assumed that the order of compulsory retirement is only on the basis of the alleged lack of integrity and not on imposition of some minor punishments here and there during earlier period. Similarly, it is apparent that another departmental proceeding pursuant to letter dated 23.6.2004 of the Deputy Conservator of

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Forests, Industrial Wood Division, was also pending. Charge No.2 in the said proceeding related to causing loss to Government to a tune of Rs.90,156/- by misappropriation and Charge No.3 was also similar misappropriation to the tune of Rs.33,973/-. It is obvious that even though such charge memos have been issued and departmental proceedings were pending, the Government has thought it fit suddenly to pass an order of compulsory retirement, even though such departmental proceedings have not been concluded.

6. Even according to the Government, the order of compulsory retirement is on lack of integrity. The question as to whether there has been any lack of integrity or not, was the subject matter of both the disciplinary proceedings which were pending. In such background, without completion of the enquiries, passing an order of compulsory retirement on the ground of lack of integrity clearly indicates that the order was rather by way of punishment, even though departmental proceedings have not been concluded. Such a course of action is obviously against the principles of natural justice and against the tenor of service jurisprudence as apparent from the decision of the Supreme Court reported in 2001 SCC (L&S)576 (STATE OF GUJARAT v. UMEDBHAI M. PATEL)

7. In the above context, the very background and the sudden movement of events after the complaint filed by the petitioner regarding illicit felling of trees alleging involvement of some politically influenced persons, cannot be lost sight of. It is apparent that initially the respondents tried to clip the wings of the petitioner by placing him under suspension in contemplation of enquiry into "grave charges". However, since such order of suspension has been stayed by the High Court, thereafter, the order of compulsory retirement has been passed on 11.9.2004, on the basis of alleged lack of integrity, even though the departmental proceedings, wherein the charges of misappropriation were framed, were yet to be completed. In such scenario, the submission of the learned Senior Counsel appearing for the petitioner that the Government found out a convenient method to get rid of an inconvenient officer, who had made allegations regarding involvement of some "politically influential" persons in the alleged illicit felling of trees, cannot be lightly brushed aside.

8. It is no doubt true that ordinarily an order of compulsory retirement is not considered as a punishment and Courts of law should not interfere with the order of compulsory retirement, which is passed on the basis of service antecedents of a Government servant.In the present case, however, the action of the Government smacks of arbitrariness and is a sort of punishment inasmuch as the compulsory retirement has been passed under the so called lack of integrity relating to charges which are yet to be decided. It is significant to note that the petitioner had been promoted in the year 2000 and no record has been produced to indicate about any entries in the

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Annual Confidential Reports indicating about the lack of integrity. It is of course true that there were allegations which were under enquiry, but at the time of passing the order of compulsory retirement, those matters had not been finalised. As a matter of fact, it has been disclosed in the counter that in view of the order of compulsory retirement those departmental proceedings shall be closed.

9. Keeping in view these exceptional circumstances, I am inclined to quash the order of compulsory retirement and direct that the petitioner shall be reinstated in service with all attendant benefits within one month from the date of receipt of this order. Since departmental proceedings were directed to be closed or contemplated to be closed on account of the fact that the order of compulsory retirement has been passed, it is obvious that such departmental proceedings would be revived and it would be open to the Government to complete such departmental proceedings in accordance with law.

10. The writ petition is accordingly allowed. No costs. Consequently, WPMP.No.33999 of 2004 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. Secretary to Government,
   Environment and Forest
   (FR.2) Department,
   Fort St. George, Chennai 600 009.

2. The Principal Chief Conservator
   of Forest, Panagal Buildings,
   Saidapet, Chennai 600 015.

3. The Conservator of Forests,
   Dindigul Circle, Dindigul.

4. District Forest Officer,
   Kodaikannal.

1 cc to The Spl. Govt. Pleader, (Forests) SR. 14359
1 cc to Mr. G. Bala, Advocate, SR. 14294

WP.NO.27978/04

RA (CO)
kk 28.3.05

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